

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 10 743
)	
RIGHT ASCENSION, INC.)	
d/b/a Adult DVD Empire)	

INFORMATION MEMORANDUM

AND NOW comes the United States of America, by its attorneys, Robert S. Cessar, Acting United States Attorney for the Western District of Pennsylvania, and Craig W. Haller, Assistant United States Attorney for said District, and submits this Information Memorandum to the Court:

I. THE INFORMATION

A one-count Information was filed against the above-named defendant for an alleged violation of federal law:

<u>COUNT</u>	<u>OFFENSE/DATE</u>	<u>TITLE/SECTION</u>
1	Mailing Obscene Matters On or about May 29, 2007	18 U.S.C. § 1461

II. ELEMENTS OF THE OFFENSE

As to Count 1:

In order for the crime of Mailing Obscene Matters, in violation of 18 U.S.C. § 1461, to be established, the government must prove all of the following essential elements beyond a reasonable doubt:

1. The defendant knowingly caused to be delivered by mail according to the direction thereon certain matters.

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 U.S. DISTRICT COURT
 WESTERN DISTRICT OF PENNSYLVANIA

Title 18, United States Code, Section 1461.

2. The defendant had knowledge of the contents of those matters at the time of their mailing.

Title 18, United States Code, Section 1461.

3. That the matters were obscene. A matter is obscene if:

- a. The average person, applying contemporary community standards, finds that the material, taken as a whole, appeals to the prurient interest; and
- b. The average person, applying contemporary community standards, finds that the material depicts sexual conduct in a patently offensive manner; and
- c. A reasonable person, viewing the material as a whole, finds that the material lacks serious literary, artistic, political or scientific value.

Miller v. California, 413 U.S. 15 (1973); Kaplan v. California, 413 U.S. 115 (1973); Pope v. Illinois, 418 U.S. 497 (1987); United States v. Pinkus, 551 F.2d 1155 (9th Cir. 1977).

III. PENALTIES

As to Count 1: Mailing Obscene Matters (18 U.S.C. § 1461):

(1) A term of probation of not less than one (1) year nor more than five (5) years (18 U.S.C. § 3561(c)(1));

(2) a fine of \$500,000 (18 U.S.C. § 3571(c)(3));

or

an alternative fine in an amount not more than the greater of twice the gross pecuniary gain to any person or twice the pecuniary loss to any person other than the defendant, unless the imposition of this alternative fine would unduly complicate or prolong the sentencing process (18 U.S.C. § 3571(d)).

IV. MANDATORY SPECIAL ASSESSMENT

A mandatory special assessment of \$400 for organizational defendants must be imposed at each count upon which the defendant is convicted, pursuant to 18 U.S.C. § 3013.

V. RESTITUTION

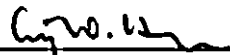
Not applicable in this case.

VI. FORFEITURE

Not applicable in this case.

Respectfully submitted,

ROBERT S. CESSAR
Acting United States Attorney



CRAIG HALLER
Assistant U.S. Attorney
PA ID No. 87714